

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 212

ARB-224-2017 (O&M)

Date of decision : 24.01.2020

M/s Vijay Inder Kumar & Company

..... Petitioner

VERSUS

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.D.K.Singal, Advocate, for the petitioner.

Ms.K.K.Kahlon, Advocate, for the respondents No.1, 2 and 6.

DEEPAK SIBAL, J. (ORAL)

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, the Act) for appointment of an Arbitrator.

The parties entered into an agreement as per which the petitioner was to construct for the respondents 20 units type-I, 20 units type-II, 20 units type-III, 8 units type-IV and 9 units type-V double storey quarters including road work, water supply and other allied work etc. in DRM Complex, Ambala Cantt. Admittedly, any dispute(s) which were to arise from such agreement were to be settled through the mode of arbitration.

Disputes having arisen between the parties, they were referred to be adjudicated upon by a panel of Arbitrators. However, since all the disputes/claims raised by the petitioner had not been referred the petitioner filed a petition under Section 11 of the Act before this Court being ARB-50-2016 “*M/s Vijay Inder Kumar & Company vs Union of India and others*”, which was disposed of on 30.09.2016 by directing the respondents to forward all claims raised by the petitioner to the arbitral Tribunal and it was left to the arbitral Tribunal to decide as to which of the claims fell within the excepted matters.

It is not disputed that after 30.09.2016 the arbitral Tribunal has not held any proceedings and this is in spite of repeated requests made by both parties

to the arbitral Tribunal to hold and conclude the proceedings. The inaction on the part of the arbitral Tribunal goes against the very objects for which the Act has been promulgated.

In view of the above, Mr.Kuldeep Singh, Chief Engineer, PWD (B&R) (Retd.), is appointed as the sole Arbitrator to adjudicate upon the disputes between the parties which are the subject matter of the present petition.

The above direction would be in line with the orders passed by this Court on 12.05.2017 in ARB-78-2016 “*D.S.Pannu and Associates Pvt. Ltd. vs. UT Engineering Department, Chandigarh and others*”, which are as follows: -

“This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator.

2. This is one of the cases where the respondents have changed the arbitrators on account of the earlier arbitrator having vacated the office by virtue of which he was appointed as an arbitrator. The petitioner invoked the arbitration clause on 29.09.2003. The Superintending Engineer was appointed as the sole arbitrator. Thereafter, another officer was appointed as a sole arbitrator. There was no progress regarding arbitration. The respondents state that in the year 2008, they appointed the first arbitrator yet again. Even thereafter, nothing was done in the arbitration. This was despite the petitioner’s letter dated 23.06.2011.

To date, there has been no progress whatsoever.

3. The petitioner is not precluded from filing this petition merely because it did not issue a notice to the respondents prior to doing so. In any event, this petition has also been pending for over a year. This cannot be permitted to continue. There is every likelihood of the present officer also vacating the office. This could go on interminably.

4. In these circumstances, the petition is disposed of by appointing Mr. Justice Ashok Bhan, former Judge of the Supreme Court of India, as the sole arbitrator. The fees shall be as per the Chandigarh Arbitration Centre (CAC) (Administrative Cost and Arbitrators’ Fees) Rules, 2014. The venue shall be the Chandigarh Arbitration Centre.”

The appointment of Mr.Kuldeep Singh would be subject to the declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to settle the dispute between the parties.

The Arbitrator is requested to complete the proceedings within the time limit specified under Section 29A of the Act.

The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and

the Arbitrator.

As per agreement expressed by learned counsel for the parties, for the sake of the convenience of their respective clients as also of the Arbitrator, the venue of the arbitration shall be at Chandigarh or any other place which is suitable to all including the Arbitrator.

A copy of the this order be forwarded to Mr.Kuldeep Singh, Chief Engineer, PWD (B&R) (Retd.) at the given address:-

H.No.113,
Sector 10-A,
Chandigarh
(0172-2749842).

After seeking the convenience of the Arbitrator, the parties are directed to appear before the Arbitrator on 07.02.2020 or any other date suitable to all concerned.

The matter is disposed of in the above terms.

24.01.2020
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No